

Federal Communications Commission

DA 99-1292

JUL 2 3 38 PM '99

DISPATCHED  
Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 99-242 ✓
Table of Allotments,	)	RM-9676
FM Broadcast Stations.	)	
(Breckenridge, Texas)	)	
	)	
(Thorndale, Texas)	)	MM Docket No. 99-243
	)	RM-9675
	)	

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: June 23, 1999**

**Released: July 2, 1999**

**Comment Date: August 23, 1999**

**Reply Date: September 7, 1999**

By the Chief, Allocations Branch

1. Before the Commission for consideration is a multiple docket Notice of Proposed Rule Making setting forth separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each petitioner has stated that it will apply for its requested channel, if allotted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket Notice of Proposed Rule making issued in response to a Commission Public Notice released October 2, 1998 (DA 98-1987). We are combing separate FM allotment proposals into a single Notice of Proposed Rule Making. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the Public Notice, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

**A. MM Docket No. 99-242, RM-9676**

**Petitioner: Breckenridge Radio Broadcasting Company**

c/o Robert Lewis Thompson  
Taylor Thiemann & Aitken, L.C.  
908 King Street, Suite 300  
Alexandria, Virginia 22314

**Proposal:** Allot Channel 261A at Breckenridge, Texas, providing additional broadcast service to the community.

Community	Present	Proposed
Breckenridge, Texas	228C2	228C2, 261A

**Coordinates:** 32-44-34 NL and 98-54-32 WL

**Additional Information:** Channel 261A can be allotted to Breckenridge with a site restriction. 1.5 kilometers (0.9 miles) south of the community. The site restriction will prevent a short spacing to Station KLUR, channel 260C1, Wichita Falls, Texas. Breckenridge is an incorporated community located in Stephens County. Breckenridge has its own post office and zip code (76424) and a population of 5,665 people according to the 1990 U.S. Census.

**FCC Contact:** Kathleen Scheuerle, (202) 418-2180

**B. MM Docket No. 99-243, RM-9675**

**Petitioner:** Houston Christian Broadcasters, Inc.

c/o Jeffrey D. Southmayd  
Southmayd & Miller  
1220 Nineteenth Street, N.W., Suite 400  
Washington, D. C. 20036

**Proposal:** Allot Channel 286A at Thorndale, Texas, reserve the channel for noncommercial educational use and amend the application filed by Houston Christian Broadcasters, Inc. for Channel 257A to specify operation on Channel \*286A (File No. BPED-970911MA).

Community	Present	Proposed
Thorndale, Texas	257A	257A, *286A

**Coordinates:** 30-36-54 NL and 97-12-18 WL

**Additional Information:** Presently there are six applicants for Channel 257A at Thorndale. The mutually-exclusive Thorndale FM applications have been held in abeyance by the Commission due to the suspension of the comparative licensing procedures. Because of developments related

to our comparative licensing procedures, we are currently unable to designate these applications for a comparative hearing or otherwise resolve these mutually exclusive applications. See Bechtel v. FCC, 10 F.3d 875 (D. C. Cir. 1993). Therefore, Houston Broadcasters, the only applicant proposing to use Channel 257A at Thorndale as a noncommercial educational station, in an attempt to resolve the mutually exclusive application conflict, is requesting the allotment and reservation of Channel 286A at Thorndale and amendment of its application for Channel 257A accordingly.

Houston Broadcasters has provided sufficient information showing that the Grade A contour of Channel 6 Television Station KCEN-TV, Temple, Texas, prohibits the use of channels in the reserved portion of the FM Band in Thorndale (Channels 201-220). The allotment and reservation of a commercial channel appears to be the only way Houston Broadcasters can provide interference-free noncommercial educational service to Thorndale. Therefore, we shall propose the allotment of Channel 286A and its reservation for noncommercial educational use at Thorndale and amendment of Houston Broadcaster's application for Channel 257A to specify operation on Channel \*286A. We are requesting specific comment as to whether Channel 286A should be reserved for noncommercial educational use. Furthermore, in the event a new party expresses an interest in Channel \*286A at Thorndale, we will allot the channel for general application if no preferable counterproposals are received by the comment date. Channel \*286A can be allotted to Thorndale without a site restriction. A Commission engineering analysis further indicates that Channel 286A is the only commercial channel that can be allotted to Thorndale. Therefore, any expressions of interest for the use of the channel for a commercial facility should be made during the comment period.

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket Notice of Proposed Rule Making should reference only the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before , 1999, and reply comments on or before , 1999, and are advised to read the Appendix for the proper procedure. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

6. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from

the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, 445 Twelfth Street, S. W.; TW-A325, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its Headquarters, Washington, D. C.